IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s)	:	Jean-Francois Bouquet et al.
U.S. Appln. No.	:	10/657,126
U.S. Filing Date	:	September 9, 2003
Title of Invention	:	IMMORTAL AVIAN CELLS
Confirm No.	:	9209
Examiner	:	Robert A. Zeman
Art Unit	:	1645

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PETITION FOR WITHDRAWAL OF ELECTION REQUIREMENT

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22303-1450

Dear Sir:

This paper is being filed to petition under 37 C.F.R. § 1.181 for reconsideration and withdrawal of the non-species election requirement of an anti-apoptotic protein, and is simultaneous with a Request for Continued Examination and Preliminary Amendment in response to the Final Action mailed June 1, 2007.

Pursuant to 37 C.F.R. § 1.17(h), enclosed is a check in the amount of $130.00 in payment of the fee. The Commissioner is hereby authorized to charge any additionally required fee for this paper, or credit any overpayment in fees for this paper, to Deposit Account No. 50-0320.

REMARKS

The Office Action with Restriction Requirement, mailed on June 16, 2006, required Applicants to elect an anti-apoptotic protein and stated that the election would not be regarded as a species election. The bcl-2 protein was elected in response.

In the non-final Office Action mailed on December 11, 2006, claims 11-12 and 15-17 are objected to as they were allegedly drawn in part to non-elected inventions.

In the Amendment in Response to Office Action filed on March 8, 2007, Applicants argued that the election of the anti-apoptotic protein should be regarded as an election of species.

In the Final Action mailed on June 1, 2007, the objection to claims 11-12 and 15-17 was maintained and Applicants were reminded of the option of petitioning the director.

The petition submitted herein is to assert that the election of an anti-apoptotic protein should be regarded as an election of species. It is argued that, in view of the instant claims presented in the Preliminary Amendment Accompanying RCE, the inventive concept of the present application is clarified and herein relates to an untransformed, immortalized, avian cell wherein the genome of the cell comprises a nucleic acid molecule encoding SV40 T+t, and wherein the cell contains and expresses a nucleic acid molecule encoding an anti-apoptotic protein. It is not the anti-apoptotic protein, per se, that is inventive, but rather, it is the use of an anti-apoptotic gene in an untransformed, immortalized, avian cell comprising a nucleic acid molecule encoding SV40 T+t.

Therefore, claim 11 is a linking claim, and clearly links the invention of Group II, which is directed to untransformed, immortalized avian cells containing nucleic acid molecules encoding an anti-apoptotic protein. Under MPEP § 809, claim 11 is a "genus claim linking species claims," wherein the genus is anti-apoptotic proteins and the species are, inter alia, the proteins recited in claims 13 and 14.

Even if claim 11 is not regarded as a linking claim, it should at the very least be considered as a generic claim. According to MPEP § 806.04(d), a generic claim should require no material element additional to those required by the species claims, and each of the species claims must require all the limitations of the generic claim. In this case, claim 11 does not require any material element in addition to the elements required by species claims 13 and 14, and species claims 13 and 14 require all limitations of claim 11. The requirement to restrict the

present invention to one embodiment, i.e., bcl-2 protein, is unduly limiting and improper. Therefore, election of the bcl-2 protein should be considered an election of species.

CONCLUSION

Withdrawal of the election requirement of an anti-apoptotic protein, and reconsideration of the requirement to an election of species are respectfully requested, especially as claim 11 is a linking claim, or at the very least, a generic claim, and especially in light of the claim amendments presented in the accompanying Preliminary Amendment.

Respectfully submitted,

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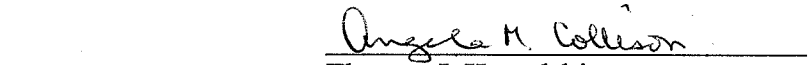
Attorneys for Applicants



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